

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

OP.No. 32000 of 2002(H)

PETITIONER:

**P.DIVAKARAN, SON OF RAGHAVAN,
AGED 51 YEARS, YOGASALA ROAD, KANNUR.**

**BY ADV. SRI.V.RAJAGOPAL,
SRI.K.N.CHATHUKUTTY.**

RESPONDENTS:

- 1. THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF WORKS & HOUSING, NIRMAN BHAVAN,
PARLIAMENT STREET, NEW DELHI-110 001.**
- 2. THE SUPERINTENDING ENGINEER,
TRIVANDRUM CENTRAL CIRCLE, C.P.W.D., TRIVANDRUM.**
- 3. THE EXECUTIVE ENGINEER,
CALICUT CENTRAL DIVISION, CENTRAL P.W.D.,
CALICUT-5.**
- 4. THE SPECIAL DEPUTY TAHSILDAR
(REVENUE RECOVERY) II, KANNUR.**

**BY ADV. SRI.BOBY JOHN, C.G.C.,
GOVERNMENT PLEADER.**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 06/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ORDER ON C.M.P. NO. 54000/2002 IN O.P. NO. 32000/2002

DISMISSED

06/02/2007.

SD/- C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE AWARD DTD. 03/07/2000 PUBLISHED BY THE ARBITRATOR.

EXT.P.2: COPY OF THE SUPPLEMENTAL AGREEMENT DTD. 27/01/2001 EXECUTED BETWEEN THE PETITIONER AND THE RESPONDENTS.

EXT.P.3: COPY OF THE CHEQUE NO. L.570147 DT. 27/01/2001 FOR RS. 6,99,029/- DRAWN ON SBI, CALICUT BY THE R.3.

EXT.P.4: COPY OF THE NOTICE ISSUED BY THE R.2. DT. 31/11/95 TO THE PETITIONER.

EXT.P.5: COPY OF THE SHOW CAUSE NOTICE DT. 29/09/95 ISSUED BY THE R.2.

EXT.P.6: COPY OF THE REPLY DT. 14/11/95 SENT TO THE R.2. BY THE PETITIONER.

EXT.P.7: COPY OF THE NOTICE OF ATTACHMENT OF PROPERTY DTD. 20/05/2002 ISSUED BY THE R.4.

EXT.P.8: COPY OF THE LETTER DTD. 16/03/2001 FROM THE R.3. INFORMING THE PETITIONER INITIATING R.R. PROCEEDINGS.

EXT.P.9: COPY OF THE LEGAL NOTICE DT. 08/07/02 ISSUED TO THE R.4. AND DISTRICT COLLECTOR REGARDING THE R.R. NOTICE.

EXT.P.10: COPY OF THE REPLY DT. 19/09/02 FROM THE R.4. TO THE LEGAL NOTICE.

EXT.P.11: COPY OF THE CLAUSE 2 OF THE AGREEMENT REGARDING COMPENSATION FOR DELAY.

RESPONDENT'S EXHIBITS:

EXT.R3.A: COPY OF THE NOTICE DTD. 17/05/1994 ISSUED TO THE PETITIONER.

EXT.R3.B: COPY OF THE ORDER DTD. 01/09/1994 TERMINATING THE CONTACT.

O.P. NO. 32000/2002:

EXT.R3.C: COPY OF THE ORDER DTD. 09/06/1995 REFERRING THE MATTER TO THE ARBITRATOR.

EXT.R3.D: COPY OF THE CLAUSE 25 OF THE AGREEMENT NO. 3/CLT CD/1992-93 DT. NIL.

//TRUE COPY//

prv.

C.N.RAMACHANDRAN NAIR, J.

.....
O.P. No.32000 of 2002
.....

Dated this the 6th day of February, 2007.

JUDGMENT

The petitioner is challenging Ext.P4 order whereunder the second respondent has demanded 10% of the contract amount towards loss for delay in completion of work in terms of clause(2) of the agreement between petitioner and the respondents for construction of a Central School. I heard counsel for the petitioner and Standing Counsel for the respondents. It is seen that the contract awarded to the petitioner for construction of the Central School was abandoned after part completion of the work and the work was retendered with a higher cost of Rs.55 lakhs. The dispute between petitioner and respondents was referred for arbitration which ended up in Ext.P1 award in favour of the petitioner for Rs.3,29,058/- together with interest. The counter claim of Rs.65 lakhs is seen rejected by the Arbitrator. The contention of counsel for the petitioner is that after arbitration there is no scope for respondents independently claiming damages for belated completion of work, whether in part or full. However, Standing Counsel for respondents contended that compensation under clause(2) is not arbitrable and is only to be decided by the second

respondent in terms of the said clause contained in the agreement. On going through the arbitration award I find the Arbitrator also has left open the issue for being decided by the second respondent. It is seen that demand was raised vide Ext.P4 on 31.11.1995 and petitioner has chosen to challenge the same nearly after seven years by filing this O.P. Counsel for respondents contended that O.P. is liable to be dismissed on the ground of delay in challenging the claim. Having regard to the nature of controversy which is partly reflected in Ext.P1 award, I feel delay is not a ground for rejecting the O.P. However, since Ext.P1 award excludes clause (2) which entitles second respondent to demand compensation for delay in completion of work in part or full and since petitioner admittedly did not complete the work and delayed it inspite of extension of time granted by respondents, I feel clause (2) is squarely applicable and compensation is rightly demanded from the petitioner. However, there is substance in the challenge against the quantum of penalty because Arbitrator himself has found that contract was cancelled without giving opportunity of hearing to the petitioner. Moreover, counter claim for the loss sustained for belated completion of work is not fully rejected by the Arbitrator. The mitigating circumstance against claim of maximum compensation under Clause (2) of the agreement is found in Ext.P1 award itself. In the circumstances, I modify Ext.P4 by

reducing the compensation to 5% of the contract amount i.e. 50% of the actual amount demanded by second respondent without any interest thereon provided petitioner remits the same on or before 31.3.2007 failing which reduction granted will stand cancelled automatically.

The O.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms